

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (LODGING) NO. 25 OF 2007
IN
NOTICE OF MOTION NO. 1914 OF 2006
IN
SUIT NO. 560 OF 1983

Messrs Bhanwarlal Premsukh & Ors. ...Appellants
Versus
Sadruddin Alibhai Premji & Ors. ...Respondents
(Org.Defendants)

Mr. S.I. Menon i/b. Y.S.bhate for appellants.

Mr. S.H.Karim for Respondents Nos. 1 to 3.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATE : 26th July, 2007.

P.C.

1. Heard learned Counsel for both sides.

2. It is true that there is substantial delay in

making application for restoration of the suit. It is also true that there is no proper explanation for delay and for not remaining present before the Court when the Court took up suit for hearing. But, in our opinion, considering that the plaintiffs are the tenants who are occupying the premises actually and an agreement was entered into with the landlord for sale of the premises to the tenants and the tenants have made substantial payment of the purchase price to the defendant-landlord and willingness of the plaintiffs to pay substantial costs to the defendant, the plaintiffs deserve to be given an opportunity of having their suit heard on merits.

3. In our opinion, therefore, the following order would meet the ends of justice :-

(i) The order of the learned Single Judge impugned in the Appeal is set aside. The suit of the plaintiffs is restored to file subject to the condition that within two weeks from today, the appellants-plaintiffs to pay to the Advocate for the defendants an amount of Rs.15,000/- as and by way of costs of this Appeal. The payment of costs is a condition precedent.

(ii) The defendants are directed to file written

statement within a period of four weeks from today.

(iii) Office to place the suit for further orders before the appropriate Court.

Appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)